

1 **49.791 Substance abuse screening, testing, and treatment for**
2 **employment and training programs. (1) DEFINITIONS.** In this section:

3 (a) "Able-bodied adult" has the meaning given in s. 49.79 (1) (am).

4 (b) "Administering agency" means an administrative agency within the
5 executive branch under ch. 15 or an entity that contracts with the state such as a
6 single county consortia under s. 49.78 (1r), a multicounty consortia under s. 49.78 (1)
7 (br), or a tribal governing body under s. 49.78 (1) (cr).

8 (c) "Confirmation test" means an analytical procedure used to quantify a
9 specific controlled substance or its metabolite in a specimen through a test that is
10 different in scientific principle from that of the initial test procedure and capable of
11 providing the requisite specificity, sensitivity, and quantitative accuracy to
12 positively confirm use of a controlled substance.

13 (d) "Controlled substance" has the meaning given in s. 49.79 (1) (b).

14 (e) "Employment and training program" means the food stamp employment
15 and training program under s. 49.79 (9).

16 (f) "Food stamp program" has the meaning given in s. 49.79 (1) (c).

17 (g) "Medical review officer" means a licensed medical provider who is employed
18 by or providing services under a contract to a qualified drug testing vendor, has
19 knowledge of substance abuse disorders and laboratory testing procedures, and has
20 the necessary training and experience to interpret and evaluate an individual's
21 positive test result in relation to the individual's medical history and valid
22 prescriptions.

23 (h) "Metabolite" means a chemical present in the body when a controlled
24 substance is being broken down through natural metabolic processes that can be

1 detected or measured as a positive indicator that a controlled substance associated
2 with the metabolite has been used.

3 (i) "Prescription" means a current order for a controlled substance that
4 indicates the specific regimen and duration of the order and that is transmitted
5 electronically or in writing by an individual authorized in this state to order the
6 controlled substance.

7 (j) "Qualified drug testing vendor" means a laboratory certified by the federal
8 centers for medical and medicaid services under the federal Clinical Laboratory
9 Improvement Amendments of 1988 to collect a specimen, carry out laboratory
10 analysis of the specimen, store the specimen for a confirmation test if required,
11 complete a confirmation test, and provide review by a medical review officer.

12 (k) "Screening" means completing a questionnaire specified by the department
13 regarding an individual's current and prior use of any controlled substance.

14 (L) "Specimen" means tissue, fluid, or any other product of the human body
15 required to be submitted by an individual for testing under this section.

16 (m) "Trauma-informed" means operating under the understanding of the
17 science of adverse childhood experiences, toxic stress, trauma, and resilience,
18 incorporating that understanding into organizational culture, policies, programs,
19 and practices, and adhering to trauma-informed principles such as safety,
20 trustworthiness and transparency, peer support, collaboration and mutuality,
21 empowerment, and cultural, historical, and gender issue recognition.

22 (n) "Treatment" means any service that is conducted under clinical supervision
23 to assist an individual through the process of recovery from controlled substance
24 abuse, including screening, application of approved placement criteria, intake,
25 orientation, assessment, individualized treatment planning, intervention,

1 individual or group and family counseling, referral, discharge planning, after care
2 or continuing care, record keeping, consultation with other professionals regarding
3 treatment services, recovery and case management, crisis intervention, education,
4 employment, and problem resolution in life skills functioning.

5 (o) "Treatment program" means a program certified by the department to
6 provide treatment for controlled substance abuse as a medically managed inpatient
7 service, a medically monitored treatment service, a day treatment service, an
8 outpatient treatment service, a transitional residential treatment service, or a
9 narcotic treatment service for opiate addiction or, as approved by the department,
10 psychosocial rehabilitation services.

11 (p) "Treatment provider" means a provider of treatment for controlled
12 substance abuse certified by the department, a provider certified under s. 440.88, or
13 a licensed professional who meets criteria established by the department of safety
14 and professional services.

15 (2) NOTICE OF REQUIREMENT. An administering agency shall provide
16 information in a format approved by the department to any individual who expresses
17 interest in or is referred to participate in an employment and training program to
18 explain the requirement for participants in certain employment and training
19 programs to undergo screening, testing, and treatment for abuse of controlled
20 substances.

21 (3) ADMINISTERING AND EVALUATING A CONTROLLED SUBSTANCE ABUSE SCREENING
22 QUESTIONNAIRE. (a) At the time of application and at annual redetermination for
23 eligibility in the food stamp program, an administering agency shall administer to
24 any able-bodied adult who is subject to the work requirement under s. 49.79 (10) (a)
25 and intends on meeting the work requirement through participation in the

1 employment and training program a controlled substance abuse screening
2 questionnaire approved by the department, which may include questions related to
3 controlled substance abuse-related criminal background and controlled substance
4 abuse. The administering agency shall determine whether answers to the controlled
5 substance abuse screening questionnaire indicate possible use of a controlled
6 substance without a valid prescription by the able-bodied adult.

7 (b) 1. An able-bodied adult who is administered a controlled substance abuse
8 screening questionnaire under par. (a) shall answer all questions on the screening
9 questionnaire, sign and date the questionnaire, and submit the questionnaire to the
10 administering agency.

11 2. If the able-bodied adult indicates on the screening questionnaire submitted
12 under subd. 1. the prescribed use of a controlled substance, the able-bodied adult
13 shall provide evidence of the valid prescription to the administering agency.

14 (c) An able-bodied adult who is administered a controlled substance abuse
15 screening questionnaire under par. (a) and who fails to comply with the requirements
16 under par. (b) is not eligible to participate in the employment and training program,
17 and the administering agency may not refer the individual to participate in the
18 employment and training program. An able-bodied adult who is denied eligibility
19 for participation in the employment and training program for failure to complete the
20 requirements under par. (b) may complete the requirements under par. (b) at any
21 time while eligible for the food stamp program.

22 (d) An able-bodied adult who completes a controlled substance abuse screening
23 questionnaire under this subsection and whose answers to the screening
24 questionnaire do not indicate possible abuse of a controlled substance has satisfied

1 the requirements of this section and may participate in an employment and training
2 program subject to this section.

3 (4) TESTING FOR USE OF A CONTROLLED SUBSTANCE REQUIRED. (a) *Individuals*
4 *required to undergo testing; exception.* 1. Except as provided in subd. 2., an
5 administering agency shall require an able-bodied adult whose answers on the
6 controlled substance abuse screening questionnaire submitted under sub. (3)
7 indicate possible use of a controlled substance without a prescription to undergo a
8 test for the use of a controlled substance.

9 2. An administering agency may not require an able-bodied adult whose
10 answers on the controlled substance abuse screening questionnaire submitted under
11 sub. (3) indicate possible use of a controlled substance and who also indicates
12 readiness to enter treatment for controlled substance abuse to undergo a test for the
13 use of a controlled substance.

14 (b) *Nature of testing required.* A test for use of a controlled substance under
15 this subsection consists of laboratory analysis of a specimen collected from an
16 able-bodied adult described in par. (a) in a manner specified by the department that
17 is consistent with guidelines from the federal department of health and human
18 services by a qualified drug testing vendor or a provider approved by the department.
19 The qualified drug testing vendor or other provider shall analyze the specimen for
20 the presence of controlled substances specified by the department.

21 (c) *Contracts for testing services.* 1. The administering agency, subject to the
22 department's approval, may contract with a trauma-informed qualified drug testing
23 vendor to collect a specimen, carry out laboratory analysis of the specimen, store the
24 specimen for confirmatory testing if required, complete confirmatory testing, provide

1 review by a medical review officer, and document and report test results to the
2 administering agency.

3 2. The department may require administering agencies to use a specific drug
4 testing service procured through state contracting if the department determines that
5 volume discounts or other preferential pricing terms may be achieved through a
6 statewide contract.

7 (d) *Effects of refusal to submit to drug test.* 1. An able-bodied adult who is
8 required to undergo a test for the use of a controlled substance under par. (a) but who
9 refuses to submit to a drug test by doing any of the following is ineligible to
10 participate in the employment and training program until the individual agrees to
11 be tested for use of a controlled substance and test results have been reported:

12 a. Failing or refusing to appear for a scheduled drug test without good cause.

13 b. Failing or refusing to complete a form or release of information required for
14 testing, including any form or release required by the qualified drug testing vendor
15 to permit the vendor to report test results to the administering agency or
16 department.

17 c. Failing or refusing to provide a valid specimen for testing.

18 d. Failing or refusing to provide verification of identity to the testing vendor.

19 2. The administering agency may direct an able-bodied adult who initially
20 refused to submit to a drug test under subd. 1. and subsequently agrees to submit
21 to a test to undergo drug testing on a random basis at any time within 10 business
22 days after the able-bodied adult agrees to submit to a test.

23 (e) *Confirmation test required.* If an able-bodied adult tests positive for the use
24 of a controlled substance, the qualified drug testing vendor shall perform a
25 confirmation test using the same specimen obtained for the initial drug test. The

1 vendor's medical review officer who is responsible for determining the presence of a
2 controlled substance under par. (b) shall interpret all drug test results that are not
3 negative.

4 (f) *Accepting test results from other programs.* For purposes of this section, an
5 administering agency may use results of a drug test performed by the administering
6 agency for the purpose of eligibility for another state program, including a work
7 experience program under s. 49.162, 49.36, or 108.133, performed at the request of
8 the department of corrections, or performed by other drug testing providers as
9 approved by the department to determine whether to refer an able-bodied adult to
10 treatment if all of the following apply:

11 1. The test results are provided directly to the administering agency.

12 2. The test results include tests for all controlled substances required by the
13 department to be tested under this section.

14 3. The test occurred within 90 days before the results are provided to the
15 administering agency.

16 (g) *Effect of a negative test.* An able-bodied adult who undergoes a test for use
17 of a controlled substance under this subsection and tests negative for use of a
18 controlled substance or who tests positive for use of a controlled substance but
19 provides to the administering agency a prescription for each controlled substance for
20 which the adult tests positive is not prohibited from participating in an employment
21 and training program.

22 (h) *Effect of a positive test.* An able-bodied adult who undergoes a test for use
23 of a controlled substance under this subsection, whose test results are positive, and
24 who does not provide evidence of a prescription for the controlled substance, as
25 determined by the qualified drug testing vendor's medical review officer, is required

1 to participate in treatment under sub. (5) to participate in an employment and
2 training program.

3 (5) PARTICIPATION IN TREATMENT REQUIRED. (a) *Individuals required to*
4 *participate in treatment.* An able-bodied adult who is described under sub. (4) (a)
5 or (h) is required to participate in trauma-informed treatment to be eligible to
6 participate in an employment and training program.

7 (b) *Referral for treatment; monitoring.* The applicable administering agency
8 shall provide to every able-bodied adult who is required to participate in treatment
9 under par. (a) information about treatment programs and county-specific
10 assessment and enrollment activities required for entry into treatment. The
11 applicable administering agency shall monitor the able-bodied adult's progress in
12 entering and completing treatment and the results of random testing for the use of
13 a controlled substance carried out during and at the conclusion of treatment.

14 (c) *Evaluation and assessment.* A treatment provider shall conduct a
15 trauma-informed substance abuse evaluation and assessment of each able-bodied
16 adult and take any of the following actions, as appropriate, based on the evaluation
17 and assessment:

18 1. If the treatment provider determines the able-bodied adult does not need
19 treatment, notify the administering agency that the able-bodied adult does not need
20 treatment.

21 2. If the treatment provider determines the able-bodied adult is in need of
22 treatment, refer the individual to an appropriate treatment program to begin
23 treatment and notify the administering agency of the referral and the expected start
24 date and duration of treatment.

1 3. If a treatment provider determines the able-bodied adult is in need of
2 treatment but is unable to refer the adult because there is a waiting list for
3 enrollment, enter the able-bodied adult on the waiting list and notify the
4 administering agency of the date the adult is expected to be enrolled.

5 (d) *Eligibility when treatment not needed or on waiting list.* 1. An able-bodied
6 adult described in par. (c) 1. is determined to have satisfied the requirements of this
7 section and is eligible under this section to participate in an employment and
8 training program.

9 2. An able-bodied adult who is on a waiting list for enrollment in an
10 appropriate treatment program under par. (c) 3. shall continue to take all necessary
11 steps to continue seeking enrollment in the appropriate treatment program. The
12 able-bodied adult is eligible under this section to participate in an employment and
13 training program while on the waiting list if the adult is not eligible for immediate
14 enrollment in another appropriate treatment program.

15 (e) *Satisfying treatment requirement through another program.* An
16 administering agency shall accept as satisfying the requirements of this subsection
17 participation in any treatment program. The able-bodied adult satisfying the
18 requirements of this subsection by participating in another treatment program shall
19 execute a release of information to allow the administering agency to obtain
20 verification of successful participation in that treatment program.

21 (f) *Effects of refusal to submit to treatment.* An able-bodied adult who is
22 required to participate in treatment under par. (a) but who refuses to participate in
23 treatment by doing any of the following is ineligible to participate in the employment
24 and training program until the individual agrees to participate in treatment while
25 still eligible for the food stamp program:

1 1. Failing or refusing to complete a form or release required for treatment
2 program administration, including a form or release required by the treatment
3 provider in order to share information with the administering agency about the
4 able-bodied adult's participation in treatment.

5 2. Failing or refusing to participate in a controlled substance test required by
6 the treatment provider or the administering agency during the course of required
7 treatment, including any random controlled substance testing directed by the
8 treatment provider or administering agency.

9 3. Failing or refusing to meet attendance or participation requirements
10 established by the treatment provider.

11 4. Failing or refusing to complete a substance abuse assessment.

12 (g) *Completion of required treatment.* An able-bodied adult required under par.
13 (a) to participate in treatment is considered to have successfully completed
14 treatment if all applicable components identified under par. (c) are satisfied.

15 (h) *Work requirements while in treatment.* An able-bodied adult who is
16 participating in an employment and training program is exempt from complying
17 with requirements to work a specified number of hours under s. 49.79 (9) or (10) while
18 participating in treatment under this subsection.

19 **(6) EFFECT OF COMPLETION, WITHDRAWAL, OR TERMINATION FROM EMPLOYMENT AND**
20 **TRAINING PROGRAM.** An able-bodied adult who satisfies any of the following is no
21 longer subject to s. 49.79 (9) (d) or this section:

22 (a) The able-bodied adult has completed or voluntarily withdrawn from
23 participation in an employment and training program.

24 (b) The able-bodied adult is terminated from an employment and training
25 program for reasons unrelated to this section.

1 (c) The able-bodied adult is no longer subject to the requirements of s. 49.79
2 (10).

3 (7) CONFIDENTIALITY OF RECORDS. Completed screening questionnaires,
4 prescriptions, testing results, and treatment records relating to this section may not
5 be disclosed except for purposes connected with the administration of an
6 employment and training program or except when disclosure is otherwise authorized
7 by law or by written consent from the individual who is the subject of the record. The
8 department may establish administrative, physical, and technical safeguard
9 procedures administering agencies must follow to assure compliance with state and
10 federal laws related to public assistance program records, drug testing and
11 treatment records, and medical records.

12 (8) APPEALS. An adverse decision under this section may be appealed under 7
13 CFR 273.15 and procedures established in rules promulgated by the division of
14 hearings and appeals.

15 (9) PAYMENT OF COSTS FOR SCREENING, TESTING, AND TREATMENT. (a) The
16 department shall pay for all costs related to screening able-bodied adults under sub.
17 (3), including the costs of producing, administering, and reviewing screening
18 questionnaires.

19 (b) The department shall pay for all costs related to testing able-bodied adults
20 under sub. (4), including any costs related to contracting with qualified drug testing
21 vendors under sub. (4) (c).

22 (c) The department shall pay costs for treatment under sub. (5) that are not
23 covered by the Medical Assistance program under subch. IV of ch. 49 or other private
24 insurance. Payments by the department under this paragraph shall be at rates no

1 higher than the rates paid for comparable services under the Medical Assistance
2 program.

3 **SECTION 78.** 71.05 (6) (a) 14. of the statutes is amended to read:

4 71.05 (6) (a) 14. Any amount received as a proportionate share of the earnings
5 and profits of a corporation that is an S corporation for federal income tax purposes
6 if those earnings and profits accumulated during a year for which the shareholders
7 have elected under s. 71.365 (4) (a) not to be a tax-option corporation, to the extent
8 not included in federal adjusted gross income for the current year. This subdivision
9 does not apply to earnings and profits accumulated during a year for which a
10 tax-option corporation has made an election under s. 71.365 (4m) (a) to be taxed at
11 the entity level.

12 **SECTION 79.** 71.05 (10) (dm) of the statutes is created to read:

13 71.05 (10) (dm) Any item of income, loss, or deduction passed through from an
14 entity that has made an election under s. 71.21 (6) (a) or 71.365 (4m) (a) to be taxed
15 at the entity level.

16 **SECTION 80.** 71.07 (7) (b) of the statutes, as affected by 2017 Wisconsin Act 59,
17 is renumbered 71.07 (7) (b) 1. and amended to read:

18 71.07 (7) (b) 1. Subject to conditions and limitations in pars. (c) and (d), if a
19 resident individual, estate or trust pays a net income tax to another state, that
20 resident individual, estate or trust may credit the net tax paid to that other state on
21 that income against the net income tax otherwise payable to the this state on income
22 of the same year. The credit may not be allowed unless the income taxed by the other
23 state is also considered income for Wisconsin tax purposes. The credit may not be
24 allowed unless claimed within the time provided in s. 71.75 (2), but s. 71.75 (4) does
25 not apply to those credits. For purposes of this paragraph subdivision, amounts

1 declared and paid under the income tax law of another state are considered a net
2 income tax paid to that other state only in the year in which the income tax return
3 for that state was required to be filed.

4 2. Income and franchise taxes paid to another state by a tax-option corporation,
5 partnership, or limited liability company that is treated as a partnership may be
6 claimed as a credit under this paragraph by that corporation's shareholders, that
7 partnership's partners, or that limited liability company's members who are
8 residents of this state and who otherwise qualify under this paragraph, unless the
9 tax-option corporation, partnership, or limited liability company has made an
10 election under s. 71.21 (6) (a) or 71.365 (4m) (a).

11 **SECTION 81.** 71.07 (7) (b) 3. of the statutes is created to read:

12 71.07 (7) (b) 3. Subject to the conditions and limitations in pars. (c) and (d), if
13 a tax-option corporation, partnership, or limited liability company makes an
14 election under s. 71.21 (6) (a) or 71.365 (4m) (a), that tax-option corporation,
15 partnership, or limited liability company may credit the net income or franchise tax
16 paid by the entity to another state on that income and the net income tax on that
17 income paid by the entity on behalf of its shareholders, partners, and members that
18 are residents of this state on a composite return filed with the other state against the
19 net income or franchise tax otherwise payable to this state on income of the same
20 year. The credit may not be allowed unless the income taxed by the other state is also
21 considered income for Wisconsin tax purposes and is otherwise attributable to
22 amounts that would be reportable to this state by shareholders, partners, or
23 members of the tax-option corporation, partnership, or limited liability company
24 that are residents of this state if the election under s. 71.21 (6) (a) or 71.365 (4m) (a)
25 was not made. The credit may not be allowed unless claimed within the time

1 provided in s. 71.75 (2), but s. 71.75 (4) does not apply to those credits. For purposes
2 of this subdivision, amounts declared and paid under the income tax law of another
3 state are considered a net income tax paid to that other state only in the year in which
4 the income tax return for that state was required to be filed.

5 **SECTION 82.** 71.07 (7) (c) of the statutes, as created by 2017 Wisconsin Act 59,
6 is amended to read:

7 71.07 (7) (c) The credit total credits under par. (b) 1. and 2. may not exceed an
8 amount determined by multiplying the taxpayer's net Wisconsin income tax by a
9 ratio derived by dividing the income subject to tax in the other state that is also
10 subject to tax in Wisconsin while the taxpayer is a resident of Wisconsin, by the
11 taxpayer's Wisconsin adjusted gross income. The credit under par. (b) 3. may not
12 exceed an amount determined by multiplying the income subject to tax in the other
13 state that is also subject to tax in Wisconsin by 7.9 percent.

14 **SECTION 83.** 71.21 (6) of the statutes is created to read:

15 71.21 (6) (a) If persons who, on the day on which an election under this
16 paragraph is made, hold more than 50 percent of the capital and profits of a
17 partnership consent, a partnership that is a partnership for federal income tax
18 purposes may elect, on or before the due date or extended due date of its return under
19 this chapter, to be taxed at the entity level at a rate of 7.9 percent of net income
20 reportable to this state as described in par. (d) 1. for that taxable year.

21 (b) It is the intent of the election under par. (a) that partners of a partnership
22 may not include in their Wisconsin adjusted gross income their proportionate share
23 of all items of income, gain, loss, or deduction of the partnership. It is also the intent
24 that the partnership shall pay tax on items that would otherwise be taxed if this
25 election was not made.

1 (c) If persons who, on the day on which the election under this paragraph is
2 made, hold more than 50 percent of the capital and profits of a partnership that has
3 elected to be taxed at the entity level under par. (a) consent, a partnership that is a
4 partnership for federal income tax purposes may elect, on or before the due date or
5 extended due date of its return under this chapter, to revoke for that taxable year its
6 election under par. (a).

7 (d) If an election is made under par. (a), all of the following apply:

8 1. The net income of the partnership is computed under subs. (1) to (5) and the
9 situs of income shall be determined as if the election under par. (a) was not made.

10 2. The partnership may not claim the loss under s. 71.05 (8).

11 3. Except as provided in s. 71.07 (7) (b) 3., the tax credits under this chapter
12 may not be claimed by the partnership.

13 4. A partner's adjusted basis of the partner's interest in the partnership is
14 determined as if the election under par. (a) was not made.

15 5. The provisions of ss. 71.09 and 71.84 relating to estimated payments and
16 underpayment interest shall apply to the partnership.

17 6. If the partnership fails to pay the amount owed to the department with
18 respect to income as a result of the election under par. (a), the department may collect
19 the amount from the partners based on their proportionate share of such income.

20 (e) The department may promulgate rules to implement this subsection.

21 **SECTION 84.** 71.36 (1) of the statutes is amended to read:

22 71.36 (1) It is the intent of this section that shareholders of tax-option
23 corporations include in their Wisconsin adjusted gross income their proportionate
24 share of the corporation's tax-option items unless the corporation elects under s.

1 71.365 (4) (a) not to be a tax-option corporation or elects under s. 71.365 (4m) (a) to
2 be taxed at the entity level.

3 **SECTION 85.** 71.365 (1) of the statutes is renumbered 71.365 (1) (a) and
4 amended to read:

5 71.365 (1) (a) For purposes of this chapter, the adjusted basis of a shareholder
6 in the stock and indebtedness of a tax-option corporation shall be determined in the
7 manner prescribed by the internal revenue code for a shareholder of an S
8 corporation, except that the nature and amount of items affecting that basis shall be
9 determined under this chapter. This ~~subsection~~ paragraph does not apply to 1978
10 and earlier taxable years of corporations which were S corporations for federal
11 income tax purposes or to taxable years of corporations for which an election has been
12 made under sub. (4) (a).

13 **SECTION 86.** 71.365 (1) (b) of the statutes is created to read:

14 71.365 (1) (b) The adjusted basis of a shareholder in the stock and indebtedness
15 of a tax-option corporation that has made an election under sub. (4m) (a) is
16 determined as if the election was not made.

17 **SECTION 87.** 71.365 (4m) of the statutes is created to read:

18 71.365 (4m) TAX-OPTION CORPORATION ELECTION TO PAY FRANCHISE OR INCOME TAX
19 AT THE ENTITY LEVEL. (a) If persons who hold more than 50 percent of the shares on
20 the day on which an election under this paragraph is made consent, a corporation
21 that is an S corporation for federal income tax purposes may elect, on or before the
22 due date or extended due date of its return under this chapter, to be taxed at the
23 entity level at a rate of 7.9 percent of net income reportable to this state as described
24 in par. (d) 1. for that taxable year.

1 (b) It is the intent of the election under par. (a) that shareholders of a tax-option
2 corporation may not include in their Wisconsin adjusted gross income their
3 proportionate share of all items of income, gain, loss, or deduction of the tax-option
4 corporation. It is also the intent that the tax-option corporation shall pay tax on
5 items that would otherwise be taxed if this election was not made.

6 (c) If persons who, on the day on which the election under this paragraph is
7 made, hold more than 50 percent of the shares of a corporation that has elected to
8 be taxed at the entity level under par. (a) consent, a corporation that is an S
9 corporation for federal income tax purposes may elect, on or before the due date or
10 extended due date of its return under this chapter, to revoke for that taxable year its
11 election under par. (a).

12 (d) If an election is made under par. (a), all of the following apply:

13 1. The net income of the tax-option corporation is computed under s. 71.34 (1k)
14 and the situs of income shall be determined as if the election was not made.

15 2. Except as provided in s. 71.07 (7) (b) 3., the tax credits under this chapter
16 may not be claimed by the tax-option corporation.

17 3. The tax-option corporation may not claim losses under ss. 71.05 (8) and
18 71.26 (4).

19 4. The provisions of ss. 71.29 and 71.84 relating to estimated payments and
20 underpayment interest shall apply to the tax-option corporation for the taxable year
21 beginning in 2019 and later years.

22 5. If the tax-option corporation fails to pay the amount owed to the department
23 with respect to income as a result of the election under par. (a), the department may
24 collect such amount from the shareholders based on their proportionate share of such
25 income.

1 (e) The department may promulgate rules to implement this subsection.

2 **SECTION 88.** 71.775 (3) (a) 4. of the statutes is created to read:

3 71.775 (3) (a) 4. The pass-through entity has elected under s. 71.21 (6) (a) or
4 71.365 (4m) (a) to be taxed at the entity level.

5 **SECTION 89.** 73.03 (71) of the statutes is amended to read:

6 73.03 (71) (a) To determine the amount of additional revenue that reported to
7 the department collected from the taxes imposed under subch. III of ch. 77 as a result
8 of ~~any federal law to expand~~ the United States Supreme Court decision that expands
9 the state's authority to require out-of-state retailers to collect and remit the taxes
10 imposed under subch. III of ch. 77 on purchases by Wisconsin residents during the
11 ~~first 12 months following the date on which the department begins collecting the~~
12 ~~additional revenue as a result of a change in federal law~~ period beginning on October
13 1, 2018, and ending on September 30, 2019.

14 (b) After the department makes the determination under par. (a), the
15 department of administration, in consultation with the department of revenue, shall
16 determine how much the individual income tax rates under s. 71.06 may be reduced
17 ~~in the following~~ for the taxable year ending on December 31, 2019, in order to
18 decrease individual income tax revenue by the amount determined under par. (a).
19 For purposes of this paragraph, ~~the department shall calculate~~ the tax rate
20 reductions shall be calculated in proportion to the share of gross tax attributable to
21 each of the tax brackets under s. 71.06 in effect during the most recently completed
22 taxable year.

23 (c) ~~The department~~ No later than October 20, 2019, the secretary of
24 administration shall certify and report the determinations made under pars. (a) and
25 (b) ~~to the secretary of the department of administration, to the governor, and to the~~

1 legislature the joint committee on finance, and the legislative audit bureau and
2 specify with that certification and report that the new tax rates take effect in for the
3 taxable year following ~~the taxable year in which the department makes the~~
4 certification under this paragraph ending on December 31, 2019, subject to par. (d).

5 **SECTION 90.** 73.03 (71) (d) of the statutes is created to read:

6 73.03 (71) (d) The legislative audit bureau shall review the determinations
7 reported under par. (c) and report its findings to the joint legislative audit committee
8 and the joint committee on finance no later than November 1, 2019. If the legislative
9 audit bureau's review of the determinations reported under par. (c) results in a
10 different calculation of the tax rates than that made under par. (b), the joint
11 committee on finance shall determine which tax rates to apply to the taxable year
12 ending on December 31, 2019, and report its determination to the governor, the
13 secretary of administration, and the secretary of revenue no later than November 10,
14 2019.

15 **SECTION 91.** 77.51 (13g) (intro.) of the statutes is amended to read:

16 77.51 (13g) (intro.) Except as provided in sub. subs. (13gm) and (13h), "retailer
17 engaged in business in this state", for purposes of the use tax, includes any of the
18 following:

19 **SECTION 92.** 77.51 (13gm) of the statutes is created to read:

20 77.51 (13gm) (a) "Retailer engaged in business in this state" does not include
21 a retailer who has no activities as described in sub. (13g), except for activities
22 described in sub. (13g) (c), unless the retailer meets either of the following criteria
23 in the previous year or current year:

24 1. The retailer's annual gross sales into this state exceed \$100,000.

1 2. The retailer's annual number of separate sales transactions into this state
2 is 200 or more.

3 (b) If an out-of-state retailer's annual gross sales into this state exceed
4 \$100,000 in the previous year or the retailer's annual number of separate sales
5 transactions into this state is 200 or more in the previous year, the retailer shall
6 register with the department and collect the taxes administered under s. 77.52 or
7 77.53 on sales sourced to this state under s. 77.522 for the entire current year.

8 (c) If an out-of-state retailer's annual gross sales into this state are \$100,000
9 or less in the previous year and the retailer's annual number of separate sales
10 transactions into this state is less than 200 in the previous year, the retailer is not
11 required to register with the department and collect the taxes administered under
12 s. 77.52 or 77.53 on sales sourced to this state under s. 77.522 until the retailer's sales
13 or transactions meet the criteria in par. (a) 1. or 2. for the current year, at which time
14 the retailer shall register with the department and collect the tax for the remainder
15 of the current year.

16 (d) All of the following apply for purposes of this subsection:

17 1. "Year" means the retailer's taxable year for federal income tax purposes.

18 2. The annual amounts described in this subsection include both taxable and
19 nontaxable sales.

20 3. Each required periodic payment of a lease or license is a separate sales
21 transaction.

22 4. Deposits made in advance of a sale are not sales transactions.

23 5. An out-of-state retailer's annual amounts include all sales into this state
24 by the retailer on behalf of other persons and all sales into this state by another
25 person on the retailer's behalf.

1 **SECTION 93.** 84.54 of the statutes is created to read:

2 **84.54 Minimum federal expenditures for projects receiving federal**
3 **funding.** (1) Except as provided in sub. (2), for all of the following projects on which
4 the department expends federal moneys, the department shall expend federal
5 moneys on not less than 70 percent of the aggregate project components eligible for
6 federal funding each fiscal year:

7 (a) Southeast Wisconsin freeway megaprojects.

8 (b) Major highway development projects.

9 (c) State highway rehabilitation projects with a total cost of less than \$10
10 million.

11 (2) If the department determines that it cannot meet the requirements under
12 sub. (1) or that it can make more effective and efficient use of federal moneys than
13 the use required under sub. (1), the department may submit a proposed alternate
14 funding plan to the joint committee on finance. If the cochairpersons of the
15 committee do not notify the department within 14 working days after the date of the
16 department's submittal that the committee has scheduled a meeting for the purpose
17 of reviewing the proposed plan, the department may expend moneys as proposed in
18 the plan. If, within 14 working days after the date of the submittal, the
19 cochairpersons of the committee notify the department that the committee has
20 scheduled a meeting for the purpose of reviewing the proposed plan, the department
21 may expend moneys as proposed in the plan only upon approval of the committee.
22 The department may continue with any projects subject to the funding requirement
23 under sub. (1) while the committee conducts its review, including any hearings
24 conducted by the committee.

25 **SECTION 94.** 86.51 of the statutes is created to read:

86.51 Requirements for local projects. (1) In this section:

(a) "Local bridge" means a bridge that is not on the state trunk highway system or on marked routes of the state trunk highway system designated as connecting highways.

(b) "Local roads" means streets under the authority of cities or villages, county trunk highways, or town roads.

(c) "Political subdivision" means a county, city, village, or town.

(d) "Project" means the development, construction, repair, or improvement of a local road or a local bridge.

(2) If the department disburses aid to a political subdivision for a project, the department shall notify the political subdivision whether the aid includes federal moneys and which project components must be paid for with federal moneys, if any.

(3) For any project meeting all of the following criteria, the department may not require a political subdivision to comply with any portion of the department's facilities development manual other than design standards:

(a) The project proposal is reviewed and approved by a professional engineer or by the highway commissioner for the county in which the project will be located.

(b) The project is conducted by a political subdivision with no expenditure of federal money.

SECTION 95. 106.05 (2) (b) (intro.) of the statutes is amended to read:

106.05 (2) (b) (intro.) Subject to par. (c) and sub. (3), from the appropriation under s. 20.445 (1) (b) (~~b~~), the department may provide to an apprentice described in par. (a) 1. or the apprentice's sponsor a completion award equal to 25 percent of the cost of tuition incurred by the apprentice or sponsor or \$1,000, whichever is less.

1 If the department provides a completion award under this subsection, the
2 department shall pay the award as follows:

3 **SECTION 96.** 106.05 (3) (a) of the statutes is amended to read:

4 106.05 (3) (a) If the amount of funds to be distributed under sub. (2) exceeds
5 the amount available in the appropriation under s. 20.445 (1) (b) (~~dr~~) for completion
6 awards under sub. (2), the department may reduce the reimbursement percentage
7 or deny applications for completion awards that would otherwise qualify under sub.
8 (2). In that case, the department shall determine the reimbursement percentage and
9 eligibility on the basis of the dates on which apprentices and sponsors become eligible
10 for completion awards.

11 **SECTION 97.** 106.13 (3m) (b) (intro.) of the statutes is amended to read:

12 106.13 (**3m**) (b) (intro.) From the appropriation under s. 20.445 (1) (~~b~~) (e), the
13 department may award grants to applying local partnerships for the implementation
14 and coordination of local youth apprenticeship programs. A local partnership shall
15 include in its grant application the identity of each public agency, nonprofit
16 organization, individual, and other person who is a participant in the local
17 partnership, a plan to accomplish the implementation and coordination activities
18 specified in subds. 1. to 6., and the identity of a fiscal agent who shall be is responsible
19 for receiving, managing, and accounting for the grant moneys received under this
20 paragraph. Subject to par. (c), a local partnership that is awarded a grant under this
21 paragraph may use the grant moneys awarded for any of the following
22 implementation and coordination activities:

23 **SECTION 98.** 106.18 of the statutes is amended to read:

1 **106.18 Youth programs in 1st class cities.** From the appropriation account
2 under s. 20.445 (1) ~~(b)~~ (fm), the department shall implement and operate youth
3 summer jobs programs in 1st class cities.

4 **SECTION 99.** 106.26 (3) (c) (intro.) of the statutes is amended to read:

5 106.26 (3) (c) (intro.) To make grants from the appropriation under s. 20.445
6 (1) ~~(b)~~ (fg) to eligible applicants to conduct projects or to match a federal grant
7 awarded to an eligible applicant to conduct a project. Grants by the department are
8 subject to all of the following requirements:

9 **SECTION 100.** 106.272 (1) of the statutes is amended to read:

10 106.272 (1) From the appropriation under s. 20.445 (1) ~~(b)~~ (dg), the department
11 shall award grants to the school board of a school district or to the governing body
12 of a private school, as defined under s. 115.001 (3d), or to a charter management
13 organization that has partnered with an educator preparation program approved by
14 the department of public instruction and headquartered in this state to design and
15 implement a teacher development program.

16 **SECTION 101.** 106.273 (3) (a) (intro.) of the statutes is amended to read:

17 106.273 (3) (a) (intro.) From the appropriation under s. 20.445 (1) ~~(b)~~ (bz), the
18 department shall ~~allocate not less than \$3,500,000 in each fiscal year for incentive~~
19 ~~grants to school districts under this subsection. From that allocation, the~~
20 ~~department shall annually award all of the following incentive grants to school~~
21 districts:

22 **SECTION 102.** 106.273 (3) (b) of the statutes is amended to read:

23 106.273 (3) (b) If the amount ~~allocated under par. (a)~~ available in the
24 appropriation under s. 20.445 (1) (bz) in any fiscal year is insufficient to pay the full
25 amount per student under par. (a) 1m. and 2m., the department may prorate the

1 amount of the department's payments among school districts eligible for incentive
2 grants under this subsection.

3 **SECTION 103.** 106.275 (1) (a) of the statutes is amended to read:

4 106.275 (1) (a) From the appropriation under s. 20.445 (1) ~~(b)~~ (cg), the
5 department ~~may allocate up to \$500,000 in each fiscal year for technical education~~
6 ~~equipment grants to school districts under this section. From that allocation, the~~
7 ~~department may award~~ technical education equipment grants under this section in
8 the amount of not more than \$50,000 to school districts whose grant applications are
9 approved under sub. (2) (b).

10 **SECTION 104.** 108.04 (2) (a) (intro.) of the statutes is amended to read:

11 108.04 (2) (a) (intro.) Except as provided in ~~par. pars.~~ (b) and to (bd), sub. (16)
12 (am) and (b), and s. 108.062 (10) and (10m) and as otherwise expressly provided, a
13 claimant is eligible for benefits as to any given week only if all of the following apply:

14 **SECTION 105.** 108.04 (2) (a) 1. of the statutes is amended to read:

15 108.04 (2) (a) 1. ~~Except as provided in s. 108.062 (10), the individual~~ The
16 claimant is able to work and available for work during that week;.

17 **SECTION 106.** 108.04 (2) (a) 2. of the statutes is amended to read:

18 108.04 (2) (a) 2. ~~Except as provided in s. 108.062 (10m), as of that week, the~~
19 ~~individual~~ The claimant has registered for work as directed in the manner prescribed
20 by the department; by rule.

21 **SECTION 107.** 108.04 (2) (a) 3. (intro.) of the statutes is renumbered 108.04 (2)
22 (a) 3. and amended to read:

23 108.04 (2) (a) 3. The individual claimant conducts a reasonable search for
24 suitable work during that week, ~~unless the search requirement is waived under par.~~
25 ~~(b) or s. 108.062 (10m)~~ and provides verification of that search to the department.

1 The search for suitable work must include at least 4 actions per week that constitute
2 a reasonable search as prescribed by rule of the department. In addition, the
3 department may, by rule, require ~~an individual~~ a claimant to take more than 4
4 reasonable work search actions in any week. The department shall require a
5 uniform number of reasonable work search actions for similar types of claimants.
6 ~~This subdivision does not apply to an individual if the department determines that~~
7 ~~the individual is currently laid off from employment with an employer but there is~~
8 ~~a reasonable expectation of reemployment of the individual by that employer. In~~
9 ~~determining whether the individual has a reasonable expectation of reemployment~~
10 ~~by an employer, the department shall request the employer to verify the individual's~~
11 ~~employment status and shall also consider other factors, including:~~

12 **SECTION 108.** 108.04 (2) (a) 3. a. to c. of the statutes are renumbered 108.04 (2)
13 (b) 1. a. to c. and amended to read:

14 108.04 (2) (b) 1. a. The history of layoffs and reemployments by the employer;.
15 b. Any information that the employer furnished to the individual claimant or
16 the department concerning the individual's claimant's anticipated reemployment
17 date; and.

18 c. Whether the individual claimant has recall rights with the employer under
19 the terms of any applicable collective bargaining agreement; and.

20 **SECTION 109.** 108.04 (2) (b) of the statutes is renumbered 108.04 (2) (b) (intro.)
21 and amended to read:

22 108.04 (2) (b) (intro.) ~~The requirements for registration for work and search for~~
23 ~~work shall be prescribed by rule of the department, and the department may by~~
24 ~~general rule shall, except as provided under par. (bd), waive these requirements the~~

1 registration for work requirement under certain stated conditions. par. (a) 2. if any
2 of the following applies:

3 **SECTION 110.** 108.04 (2) (b) 1. (intro.) of the statutes is created to read:

4 108.04 (2) (b) 1. (intro.) The department determines that the claimant is
5 currently laid off from employment with an employer but there is a reasonable
6 expectation of reemployment of the claimant by that employer within a period of 8
7 weeks, which may be extended up to an additional 4 weeks but not to exceed a total
8 of 12 weeks. In determining whether the claimant has a reasonable expectation of
9 reemployment by an employer, the department shall request the employer to verify
10 the claimant's employment status and shall consider all of the following:

11 **SECTION 111.** 108.04 (2) (b) 2. to 6. of the statutes are created to read:

12 108.04 (2) (b) 2. The claimant has a reasonable expectation of starting
13 employment with a new employer within 4 weeks and the employer has verified the
14 anticipated starting date with the department. A waiver under this subdivision may
15 not exceed 4 weeks.

16 3. The claimant has been laid off from work and routinely obtains work through
17 a labor union referral and all of the following apply:

18 a. The union is the primary method used by workers to obtain employment in
19 the claimant's customary occupation.

20 b. The union maintains records of unemployed members and the referral
21 activities of these members, and the union allows the department to inspect those
22 records.

23 c. The union provides, upon the request of the department, any information
24 regarding a claimant's registration with the union or any referrals for employment
25 it has made to the claimant.

1 d. Prospective employers of the claimant seldom place orders with the public
2 employment office for jobs requiring occupational skills similar to those of the
3 claimant.

4 e. The claimant is registered for work with a union and satisfies the
5 requirements of the union relating to job referral procedures, and maintains
6 membership in good standing with the union.

7 f. The union enters into an agreement with the department regarding the
8 requirements of this subdivision.

9 4. The claimant is summoned to serve as a prospective or impaneled juror.

10 5. The requirements are waived under s. 108.04 (16) or 108.062 (10m), or the
11 claimant is enrolled in and satisfactorily participating in a self-employment
12 assistance program or another program established under state or federal law and
13 the program provides that claimants who participate in the program shall be waived
14 by the department from work registration requirements.

15 6. The claimant is unable to complete registration due to circumstances that
16 the department determines are beyond the claimant's control.

17 **SECTION 112.** 108.04 (2) (bb) of the statutes is created to read:

18 108.04 (2) (bb) The department shall, except as provided under par. (bd), waive
19 the work search requirement under par. (a) 3. if any of the following applies:

20 1. A reason specified in par (b) 1., 2., 3., or 4.

21 2. The claimant performs any work for his or her customary employer.

22 3. The requirements are waived under s. 108.04 (16) or 108.062 (10m), or the
23 claimant is enrolled in and satisfactorily participating in a self-employment
24 assistance program or another program established under state or federal law and

1 the program provides that claimants who participate in the program shall be waived
2 by the department from work search requirements.

3 4. The claimant has not complied with the requirement because of an error
4 made by personnel of the department.

5 5. The claimant's most recent employer failed to post appropriate notice posters
6 as to claiming unemployment benefits as required by the department by rule, and
7 the claimant was not aware of the work search requirement.

8 6. The claimant has been referred for reemployment services, is participating
9 in such services, or is not participating in such services, but has good cause for failure
10 to participate. For purposes of this subdivision, a claimant has good cause if he or she
11 is unable to participate due to any of the following:

- 12 a. A reason specified in subd. 3. or par (b) 4.
13 b. The claimant is employed.
14 c. The claimant is attending a job interview.
15 d. Circumstances that the department determines are beyond the claimant's
16 control.

17 **SECTION 113.** 108.04 (2) (bd) of the statutes is created to read:

18 108.04 (2) (bd) The department may, by rule, do any of the following if doing
19 so is necessary to comply with a requirement under federal law or is specifically
20 allowed under federal law:

- 21 1. Modify the availability of any waiver under par. (b) or (bb).
22 2. Establish additional waivers from the requirements under par. (a) 2. and 3.

23 **SECTION 114.** 108.04 (2) (bm) of the statutes is amended to read:

24 108.04 (2) (bm) A claimant is ineligible to receive benefits for any week for
25 which there is a determination that the claimant failed to conduct a reasonable

1 ~~search for suitable~~ comply with the registration for work and work and search
2 requirements under par. (a) 2. or 3. or failed to provide verification to the department
3 that the claimant complied with those requirements, unless the department has not
4 waived the search requirement those requirements under par. (b), (bb), or (bd) or s.
5 108.062 (10m). If the department has paid benefits to a claimant for any such week,
6 the department may recover the overpayment under s. 108.22.

7 SECTION 115. 165.055 (3) of the statutes is repealed.

8 SECTION 116. 165.07 of the statutes is created to read:

9 **165.07 Intervention by joint committee on legislative organization.** If
10 the joint committee on legislative organization intervenes in an action in state or
11 federal court as permitted under s. 803.09 (2m), the attorney general shall notify the
12 court of the substitution of counsel by special counsel appointed by the joint
13 committee on legislative organization and may not participate in the action.

14 SECTION 117. 165.08 of the statutes is renumbered 165.08 (1) and amended to
15 read:

16 165.08 (1) Any civil action prosecuted by the department by direction of any
17 officer, department, board, or commission, ~~shall be compromised or discontinued~~
18 ~~when so directed by such officer, department, board or commission. Any or any~~ civil
19 action prosecuted by the department on the initiative of the attorney general, or at
20 the request of any individual may be compromised or discontinued ~~with the approval~~
21 ~~of the governor~~ only by submission of a proposed plan to the joint committee on
22 finance for the approval of the committee. The compromise or discontinuance may
23 occur only if the joint committee on finance approves the proposed plan. No proposed
24 plan may be submitted to the joint committee on finance if the plan concedes the
25 unconstitutionality or other invalidity of a statute, facially or as applied, or concedes

1 that a statute violates or is preempted by federal law, without the approval of the
2 joint committee on legislative organization.

3 (2) In any criminal action prosecuted by the attorney general, the department
4 shall have the same powers with reference to such action as are vested in district
5 attorneys.

6 SECTION 118. 165.10 of the statutes, as created by 2017 Wisconsin Act 59, is
7 amended to read:

8 **165.10 Limits on expenditure Deposit of discretionary settlement**
9 **funds.** Notwithstanding s. 20.455 (3), before the ~~The~~ attorney general may expend
10 shall deposit all settlement funds under s. 20.455 (3) (g) ~~that are not committed~~
11 ~~under the terms of the settlement, the attorney general shall submit to the joint~~
12 ~~committee on finance a proposed plan for the expenditure of the funds. If the~~
13 ~~cochairpersons of the committee do not notify the attorney general within 14 working~~
14 ~~days after the submittal that the committee has scheduled a meeting for the purpose~~
15 ~~of reviewing the proposed plan, the attorney general may expend the funds to~~
16 ~~implement the proposed plan. If, within 14 working days after the submittal, the~~
17 ~~cochairpersons of the committee notify the attorney general that the committee has~~
18 ~~scheduled a meeting for the purpose of reviewing the proposed plan, the attorney~~
19 ~~general may expend the funds only to implement the plan as approved by the~~
20 ~~committee into the general fund.~~

21 SECTION 119. 165.25 (1) of the statutes is amended to read:

22 165.25 (1) REPRESENT STATE IN APPEALS AND ON REMAND. Except as provided in
23 ss. 5.05 (2m) (a), 19.49 (2) (a), and 978.05 (5), if the joint committee on legislative
24 organization does not intervene as permitted under s. 803.09 (2m), appear for the
25 state and prosecute or defend all actions and proceedings, civil or criminal, in the

1 court of appeals and the supreme court, in which the state is interested or a party,
2 and attend to and prosecute or defend all civil cases sent or remanded to any circuit
3 court in which the state is a party. ~~Nothing~~ The joint committee on legislative
4 organization may intervene as permitted under s. 803.09 (2m) at any time, and if the
5 committee intervenes, the attorney general shall notify the court of the substitution
6 of counsel by special counsel appointed by the committee to represent the state and
7 may not participate in the action, proceeding, or case. Unless the joint committee on
8 legislative organization intervenes as permitted under s. 803.09 (2m), nothing in this
9 subsection deprives or relieves the attorney general or the department of justice of
10 any authority or duty under this chapter in any other matter.

11 **SECTION 120.** 165.25 (1m) of the statutes is amended to read:

12 165.25 (1m) REPRESENT STATE IN OTHER MATTERS. If the joint committee on
13 legislative organization does not intervene as permitted under s. 803.09 (2m), if
14 requested by the governor or either house of the legislature, appear for and represent
15 the state, any state department, agency, official, employee or agent, whether
16 required to appear as a party or witness in any civil or criminal matter, and prosecute
17 or defend in any court or before any officer, any cause or matter, civil or criminal, in
18 which the state or the people of this state may be interested. The joint committee on
19 legislative organization may intervene as permitted under s. 803.09 (2m) at any
20 time, and if the committee intervenes, the attorney general shall notify the court of
21 the substitution of counsel by special counsel appointed by the committee to
22 represent the state and may not participate in the cause or matter. The public service
23 commission may request under s. 196.497 (7) that the attorney general intervene in
24 federal proceedings. All expenses of the proceedings shall be paid from the
25 appropriation under s. 20.455 (1) (d).

1 **SECTION 121.** 165.25 (6) (a) of the statutes is renumbered 165.25 (6) (a) 1. and
2 amended to read:

3 165.25 (6) (a) 1. At Except as provided in ss. 806.04 (11) and 893.825 (2), at the
4 request of the head of any department of state government, the attorney general may
5 appear for and defend any state department, or any state officer, employee, or agent
6 of the department in any civil action or other matter brought before a court or an
7 administrative agency which is brought against the state department, or officer,
8 employee, or agent for or on account of any act growing out of or committed in the
9 lawful course of an officer's, employee's, or agent's duties. Witness fees or other
10 expenses determined by the attorney general to be reasonable and necessary to the
11 defense in the action or proceeding shall be paid as provided for in s. 885.07. The
12 attorney general may compromise and settle the action as the attorney general
13 determines to be in the best interest of the state except that, if the action is for
14 injunctive relief or there is a proposed consent decree, the attorney general may not
15 compromise or settle the action without first submitting a proposed plan to the joint
16 committee on finance. If, within 14 working days after the plan is submitted, the
17 cochairpersons of the committee notify the attorney general that the committee has
18 scheduled a meeting for the purpose of reviewing the proposed plan, the attorney
19 general may compromise or settle the action only with the approval of the committee.
20 The attorney general may not submit a proposed plan to the joint committee on
21 finance under this subdivision in which the plan concedes the unconstitutionality or
22 other invalidity of a statute, facially or as applied, or concedes that a statute violates
23 or is preempted by federal law, without the approval of the joint committee on
24 legislative organization.

SECTION 121

1 2. Members, officers, and employees of the Wisconsin state agencies building
2 corporation and the Wisconsin state public building corporation are covered by this
3 section. Members of the board of governors created under s. 619.04 (3), members of
4 a committee or subcommittee of that board of governors, members of the injured
5 patients and families compensation fund peer review council created under s.
6 655.275 (2), and persons consulting with that council under s. 655.275 (5) (b) are
7 covered by this section with respect to actions, claims, or other matters arising
8 before, on, or after April 25, 1990. The attorney general may compromise and settle
9 claims asserted before such actions or matters formally are brought or may delegate
10 such authority to the department of administration. This paragraph may not be
11 construed as a consent to sue the state or any department thereof or as a waiver of
12 state sovereign immunity.

13 **SECTION 122.** 227.01 (3m) of the statutes is created to read:

14 227.01 (3m) (a) "Guidance document" means, except as provided in par. (b), any
15 formal or official document or communication issued by an agency, including a
16 manual, handbook, directive, or informational bulletin, that does any of the
17 following:

18 1. Explains the agency's implementation of a statute or rule enforced or
19 administered by the agency, including the current or proposed operating procedure
20 of the agency.

21 2. Provides guidance or advice with respect to how the agency is likely to apply
22 a statute or rule enforced or administered by the agency, if that guidance or advice
23 is likely to apply to a class of persons similarly affected.

24 (b) "Guidance document" does not include any of the following:

1 1. A rule that has been promulgated and that is currently in effect or a proposed
2 rule that is in the process of being promulgated.

3 2. A standard adopted, or a statement of policy or interpretation made, whether
4 preliminary or final, in the decision of a contested case, in a private letter ruling
5 under s. 73.035, or in an agency decision upon or disposition of a particular matter
6 as applied to a specific set of facts.

7 3. Any document or activity described in sub. (13) (a) to (zz), except that
8 “guidance document” includes a pamphlet or other explanatory material described
9 under sub. (13) (r) that otherwise satisfies the definition of “guidance document”
10 under par. (a).

11 4. Any document that any statute specifically provides is not required to be
12 promulgated as a rule.

13 5. A declaratory ruling issued under s. 227.41.

14 6. A pleading or brief filed in court by the state, an agency, or an agency official.

15 7. A letter or written legal advice of the department of justice or a formal or
16 informal opinion of the attorney general, including an opinion issued under s.
17 165.015 (1).

18 8. Any document or communication for which a procedure for public input,
19 other than that provided under s. 227.112 (1), is provided by law.

20 9. Any document or communication that is not subject to the right of inspection
21 and copying under s. 19.35 (1).

22 **SECTION 123.** 227.01 (13) (intro.) of the statutes is amended to read:

23 227.01 (13) (intro.) “Rule” means a regulation, standard, statement of policy,
24 or general order of general application which that has the effect force of law and
25 which that is issued by an agency to implement, interpret, or make specific

SECTION 123

1 legislation enforced or administered by the agency or to govern the organization or
2 procedure of the agency. "Rule" includes a modification of a rule under s. 227.265.
3 "Rule" does not include, and s. 227.10 does not apply to, any action or inaction of an
4 agency, whether it would otherwise meet the definition under this subsection, ~~which~~
5 that:

6 **SECTION 124.** 227.05 of the statutes is created to read:

7 **227.05 Agency publications.** An agency shall identify the applicable
8 provision of federal law or the applicable state statutory or administrative code
9 provision that supports any statement or interpretation of law that the agency
10 makes in any publication, whether in print or on the agency's Internet site, including
11 guidance documents, forms, pamphlets, or other informational materials, regarding
12 the laws the agency administers.

13 **SECTION 125.** Subchapter II (title) of chapter 227 [precedes 227.10] of the
14 statutes is amended to read:

15 **CHAPTER 227**

16 **SUBCHAPTER II**

17 **ADMINISTRATIVE RULES AND**

18 **GUIDANCE DOCUMENTS**

19 **SECTION 126.** 227.10 (2g) of the statutes is created to read:

20 227.10 (2g) No agency may seek deference in any proceeding based on the
21 agency's interpretation of any law.

22 **SECTION 127.** 227.11 (title) of the statutes is amended to read:

23 **227.11 (title) ~~Extent to which chapter confers~~ Agency rule-making**
24 **authority.**

25 **SECTION 128.** 227.11 (3) of the statutes is created to read:

1 227.11 (3) (a) A plan that is submitted to the federal government for the
2 purpose of complying with a requirement of federal law does not confer rule-making
3 authority and cannot be used by an agency as authority to promulgate rules. No
4 agency may agree to promulgate a rule as a component of a compliance plan unless
5 the agency has explicit statutory authority to promulgate the rule at the time the
6 compliance plan is submitted.

7 (b) A settlement agreement, consent decree, or court order does not confer
8 rule-making authority and cannot be used by an agency as authority to promulgate
9 rules. No agency may agree to promulgate a rule as a term in any settlement
10 agreement, consent decree, or stipulated order of a court unless the agency has
11 explicit statutory authority to promulgate the rule at the time the settlement
12 agreement, consent decree, or stipulated order of a court is executed.

13 **SECTION 129.** 227.112 of the statutes is created to read:

14 **227.112 Guidance documents.** (1) (a) Before adopting a guidance document,
15 an agency shall submit to the legislative reference bureau the proposed guidance
16 document with a notice of a public comment period on the proposed guidance
17 document under par. (b), in a format approved by the legislative reference bureau,
18 for publication in the register. The notice shall specify the place where comments
19 should be submitted and the deadline for submitting those comments.

20 (b) The agency shall provide for a period for public comment on a proposed
21 guidance document submitted under par. (a), during which any person may submit
22 written comments to the agency with respect to the proposed guidance document.
23 Except as provided in par. (c), the period for public comment shall end no sooner than
24 the 21st day after the date on which the proposed guidance document is published
25 in the register under s. 35.93 (2) (b) 3. im. The agency may not adopt the proposed

SECTION 129

1 guidance document until the comment period has concluded and the agency has
2 complied with par. (d).

3 (c) An agency may hold a public comment period shorter than 21 days with the
4 approval of the governor.

5 (d) An agency shall retain all written comments submitted during the public
6 comment period under par. (b) and shall consider those comments in determining
7 whether to adopt the guidance document as originally proposed, modify the proposed
8 guidance document, or take any other action.

9 (2) An agency shall post each guidance document that the agency has adopted
10 on the agency's Internet site and shall permit continuing public comment on the
11 guidance document. The agency shall ensure that each guidance document that the
12 agency has adopted remains on the agency's Internet site as provided in this
13 subsection until the guidance document is no longer in effect, is no longer valid, or
14 is superseded or until the agency otherwise rescinds its adoption of the guidance
15 document.

16 (3) A guidance document does not have the force of law and does not provide
17 the authority for implementing or enforcing a standard, requirement, or threshold,
18 including as a term or condition of any license. An agency that proposes to rely on
19 a guidance document to the detriment of a person in any proceeding shall afford the
20 person an adequate opportunity to contest the legality or wisdom of a position taken
21 in the guidance document. An agency may not use a guidance document to foreclose
22 consideration of any issue raised in the guidance document.

23 (4) If an agency proposes to act in any proceeding at variance with a position
24 expressed in a guidance document, it shall provide a reasonable explanation for the
25 variance. If an affected person in any proceeding may have relied reasonably on the

1 agency's position, the explanation must include a reasonable justification for the
2 agency's conclusion that the need for the variance outweighs the affected person's
3 reliance interest.

4 (5) Persons that qualify under s. 227.12 to petition an agency to promulgate
5 a rule may, as provided in s. 227.12, petition an agency to promulgate a rule in place
6 of a guidance document.

7 (6) Any guidance document shall be signed by the secretary or head of the
8 agency below the following certification: "I have reviewed this guidance document
9 or proposed guidance document and I certify that it complies with sections 227.10
10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document
11 or proposed guidance document contains no standard, requirement, or threshold
12 that is not explicitly required or explicitly permitted by a statute or a rule that has
13 been lawfully promulgated. I further certify that the guidance document or proposed
14 guidance document contains no standard, requirement, or threshold that is more
15 restrictive than a standard, requirement, or threshold contained in the Wisconsin
16 Statutes."

17 (7) This section does not apply to guidance documents adopted before the first
18 day of the 7th month beginning after the effective date of this subsection [LRB
19 inserts date], but on that date any guidance document that has not been adopted in
20 accordance with sub. (1) or that does not contain the certification required under sub.
21 (6) shall be considered rescinded.

22 (8) The legislative council staff shall provide agencies with assistance in
23 determining whether documents and communications are guidance documents that
24 are subject to the requirements under this section.

25 **SECTION 130.** 227.13 of the statutes is amended to read:

1 **227.13 Advisory committees and informal consultations.** An agency may
2 use informal conferences and consultations to obtain the viewpoint and advice of
3 interested persons with respect to contemplated rule making. An agency also may
4 also appoint a committee of experts, interested persons or representatives of the
5 public to advise it with respect to any contemplated rule making. The Such a
6 committee shall have advisory powers only. Whenever an agency appoints a
7 committee under this section, the agency shall submit a list of the members of the
8 committee to the joint committee for review of administrative rules.

9 **SECTION 131.** 227.135 (1) (g) of the statutes is created to read:

10 227.135 (1) (g) A statement as to whether the agency anticipates that the
11 proposed rule will have minimal or no economic impact, a moderate economic impact,
12 or a significant economic impact, whether locally, statewide, or on a sector of the
13 economy.

14 **SECTION 132.** 227.135 (1) (h) of the statutes is created to read:

15 227.135 (1) (h) For a proposed emergency rule promulgated under s. 227.24,
16 an explanation of why the rule is necessary for the preservation of the public peace,
17 health, safety, or welfare. If the rule is exempt from the required finding of
18 emergency, the statement of scope shall cite the act number and section or the statute
19 section authorizing the promulgation of an emergency rule or a statement that the
20 rule is promulgated at the direction of the joint committee for review of
21 administrative rules under s. 227.26 (2) (b). The agency shall also include a
22 statement as to whether the agency will promulgate a corresponding permanent rule
23 and the agency's anticipated time line for promulgating the permanent rule.

24 **SECTION 133.** 227.135 (2) of the statutes is renumbered 227.135 (2) (a) 1. and
25 amended to read:

1 227.135 (2) (a) 1. An Except as provided in subd. 2., an agency that has
2 prepared a statement of the scope of the proposed rule shall present the statement
3 to the department of administration, which shall make a determination as to
4 whether the agency has the explicit authority to promulgate the rule as proposed in
5 the statement of scope and shall report the statement of scope and its determination
6 to the governor who, in his or her discretion, may approve or reject the statement of
7 scope. The Except as provided in subd. 2., the agency may not send the statement
8 to the legislative reference bureau for publication under sub. (3) until the governor
9 issues a written notice of approval of the statement and may not, without the written
10 approval of the governor, send the statement to the legislative reference bureau for
11 publication under sub. (3) more than 30 days after the date of the governor's approval
12 of the statement of scope.

13 (b) The An agency that has prepared a statement of the scope of the proposed
14 rule shall also present the statement to the individual or body with policy-making
15 powers over the subject matter of the proposed rule for approval. The individual or
16 body with policy-making powers may not approve the statement until at least 10
17 days after publication of the statement under sub. (3) and, if a preliminary public
18 hearing and comment period are held by the agency under s. 227.136, until the
19 individual or body has received and reviewed any public comments and feedback
20 received from the agency under s. 227.136 (5).

21 (c) No state employee or official may perform any activity in connection with
22 the drafting of a proposed rule, except for an activity necessary to prepare the
23 statement of the scope of the proposed rule, until the governor and the individual or
24 body with policy-making powers over the subject matter of the proposed rule
25 approve the statement has been approved as required under pars. (a) and (b). This

SECTION 133

1 subsection paragraph does not prohibit an agency from performing an activity
2 necessary to prepare a petition and proposed rule for submission under s. 227.26 (4).

3 **SECTION 134.** 227.135 (2) (a) 2. of the statutes is created to read:

4 227.135 (2) (a) 2. The requirement under subd. 1. does not apply to statements
5 of scope prepared by the department of public instruction.

6 **SECTION 135.** 227.135 (3) of the statutes is amended to read:

7 227.135 (3) ~~If the governor approves a~~ An agency that prepares a statement
8 of the scope of a proposed rule under sub. (2), the agency (1) shall, subject to sub. (2)
9 (a) 1., send an electronic copy of the statement to the legislative reference bureau,
10 in a format approved by the legislative reference bureau, for publication in the
11 register. On the same day that the agency sends the statement to the legislative
12 reference bureau, the agency shall send a copy of the statement to the secretary of
13 administration and to the chief clerks of each house of the legislature, who shall
14 distribute the statement to the cochairpersons of the joint committee for review of
15 administrative rules. The agency shall include with any statement of scope sent to
16 the legislative reference bureau the date of the governor's approval of the statement
17 of scope if such approval is required under sub. (2) (a). The legislative reference
18 bureau shall assign a discrete identifying number to each statement of scope and
19 shall include that number and the date of the governor's approval, if required, in the
20 publication of the statement of scope in the register.

21 **SECTION 136.** 227.135 (4) of the statutes is renumbered 227.135 (4) (a) (intro.)
22 and amended to read:

23 227.135 (4) (a) (intro.) If at any time after a statement of the scope of a proposed
24 rule is approved under sub. (2) the agency changes the scope of the proposed rule in
25 any meaningful or measurable way, ~~including changing the scope of the proposed~~

1 rule so as to include in the scope any activity, business, material, or product that is
2 not specifically included in the original scope of the proposed rule, the agency shall
3 prepare and obtain approval of a revised statement of the scope of the proposed rule
4 in the same manner as the original statement was prepared and approved under
5 subs. (1) and (2). No For purposes of this subsection, a meaningful or measurable
6 change includes any of the following:

7 (b) Whenever an agency is required to prepare a revised statement of scope
8 under this subsection, no state employee or official may perform any activity in
9 connection with the drafting of the proposed rule except for an activity necessary to
10 prepare the revised statement of the scope of the proposed rule until the revised
11 statement is so approved as provided in sub. (2).

12 **SECTION 137.** 227.135 (4) (a) 1. to 6. of the statutes are created to read:

13 227.135 (4) (a) 1. A change to the objectives of the proposed rule.

14 2. A change to the basis and purpose of the proposed rule.

15 3. A change to the policies to be included in the proposed rule.

16 4. A change to the entities affected by the proposed rule.

17 5. A change to the overall breadth or scope of the regulation in the proposed
18 rule.

19 6. A change to the scope of the proposed rule so as to include in the scope any
20 activity, business, material, or product that is not specifically included in the original
21 statement.

22 **SECTION 138.** 227.135 (6) of the statutes is created to read:

23 227.135 (6) An agency that intends to concurrently promulgate an emergency
24 rule and a permanent rule that are identical in substance may submit one statement
25 of scope indicating this intent.